

Exhibit B

Page 53:17-54:15

17 MR. DUBIN: I will lay a

18 further foundation for it.

19 BY MR. DUBIN:

20 Q. We are going to be talking about

21 your work identifying chrysotile in Johnson &

22 Johnson, but, typically, when MAS was

23 identifying chrysotile in Johnson & Johnson,

24 it was -- what was being called chrysotile was

25 yellow in parallel, right?

1 MR. LUDWIG: Same objection.

2 That is exactly what the Court

3 ruled upon. So objection.

4 MR. DUBIN: No. Those are the

5 reports at issue, which the Court said we

6 could ask about.

7 MS. O'DELL: And if you would

8 like to ask Mr. Hess about specific reports,

9 he is here and prepared to respond to your

10 questions, but asking for expert opinion is

11 beyond the scope of what Judge Schneider

12 established for this deposition and we'll

13 instruct the witness not to answer.

14 MR. LUDWIG: I instruct the

15 witness not to answer that question.

Page 54:17-55:25

17 Q. In your reports identifying

18 chrysotile in Johnson & Johnson, what color

19 are the particles that you're calling

20 chrysotile typically in parallel?

21 MR. LUDWIG: Objection to form.

22 THE WITNESS: The colors that I

23 utilize to determine the wavelength are at the

24 edge of the particle and not in the center.

25 BY MR. DUBIN:

1 Q. Okay. What color are the particles?

2 MS. O'DELL: Objection to the

3 form.

4 What particle? What --

5 BY MR. DUBIN:

6 Q. The particle that you're calling

7 chrysotile in the reports that you're talking

8 about today?

9 MR. LUDWIG: Is there a

10 specific report you want to show him? This

11 right here, it looks like an exhibit created
12 by defense counsel. So that's not -- he is
13 not here to opine about this exhibit that
14 looks like a PowerPoint by someone else.
15 This is not a --
16 MR. DUBIN: This is enough
17 speaking objections. You can make your
18 objections if you want to make your
19 objections. If you want to instruct your
20 witness not to answer the question, then you
21 can do that, but no more speaking objections.
22 It's gone way too far.
23 MR. LUDWIG: Based on the scope
24 that the Judge had lined out, I am instructing
25 him not to answer that question.

Page 58:23-60:4

23 MR. DUBIN: And I am going to
24 identify the specific page that we're talking
25 about. So let's put it in chat and then we
1 can call it up, okay, and then we're going to
2 go to page 3 of this.
3 MS. O'DELL: And if you would
4 identify -- please, just if you'll go back to
5 page 1. Because I am not seeing it in the
6 chat yet.
7 MR. LUDWIG: It's in the chat
8 here now.
9 MR. DUBIN: It is in the chat.
10 MS. O'DELL: Okay.
11 MR. DUBIN: 296, actually, is
12 the image and we can rotate that so we can see
13 it better.
14 MS. O'DELL: And what's -- I'm
15 sorry, Morty. I couldn't see it. I was too
16 slow trying to see. I see here. Just a
17 moment. Let me make sure that this is
18 actually a report at issue in the MDL.
19 This is not one of the reports
20 that's been disclosed in the MDL and so we
21 would object to questioning based on that.
22 MR. LUDWIG: If it's not a
23 report disclosed in the MDL and it's not
24 subject to the Judge's scope, then I am
25 instructing the witness not to answer. I

1 don't know if it's his report or not. I trust
2 Ms. O'Dell.
3 So you're instructed not to
4 answer.

Page 65:17-66:1

17 Q. All right. We'll come back to that
18 in a bit.
19 Do you know what the purpose is
20 of a blue light or a daylight filter?
21 MS. O'DELL: Object to the
22 form.
23 MR. LUDWIG: Object to the
24 form, yeah. It calls for expert testimony.
25 I instruct you not to answer
1 that question.

Page 66:2-67:5

2 MR. DUBIN: You're instructing
3 him not to answer? I am asking him about the
4 work he did, how he set up his microscope, and
5 what filters he was using and you're
6 instructing him not to answer that?
7 MS. O'DELL: That was not your
8 question.
9 MR. DUBIN: Well, I just asked
10 him about whether it had a blue light filter
11 and whether he was using it and I am asking
12 him now what his understanding of the purpose
13 of that type of filter is. Are you
14 instructing him not to answer that question?
15 MS. O'DELL: He is here to --
16 he is here to testify to what he did, which
17 he -- the equipment he used, which he has been
18 responding to those questions.
19 Understanding about certain
20 methodologies, giving his opinion about
21 certain methodologies is beyond the scope of
22 what Judge Schneider has ordered.
23 MR. DUBIN: Are you instructing
24 him not to answer --
25 MR. LUDWIG: The objection --
1 MR. DUBIN: -- a simple
2 question about the purpose of a blue light
3 filter? Are you instructing him not to
4 answer?

5 MR. LUDWIG: Yes.

Page 69:3-17

3 (Exhibit 7 marked for
4 identification.)

5 BY MR. DUBIN:

6 Q. Page 22, can you tell me if a blue
7 light or daylight filter is being used on this
8 image?

9 MR. LUDWIG: Objection --
10 objection. This, once again, calls for expert
11 opinion, which is outside the scope of the
12 purpose of this deposition as instructed by
13 the Judge.

14 MR. DUBIN: Are you instructing
15 him not to answer the question?

16 MR. LUDWIG: I am instructing
17 him not to answer the question.

Page 70:6-71:21

6 (Exhibit 8 marked for
7 identification.)

8 BY MR. DUBIN:

9 Q. I am putting up the image that I
10 showed you before, as well as the image from
11 Zimmerman that I showed you before. These are
12 both analyses that you performed.

13 Can you tell me why the color
14 of the talc is different in the two images?

15 MS. O'DELL: We object to the
16 use of this document. First, Vanderbilt is
17 not at issue in this case, it's not a report
18 that's at issue in this case. We object to
19 the use of that image.

20 To the degree you want to have
21 him -- ask him about the Zimmerman report.
22 You had it up. He is welcome to answer
23 questions, but we object to the use of this
24 defense created exhibit.

25 MR. LUDWIG: And I am going to
1 join and I am going to instruct him not to
2 answer.

3 Once again, you're getting into
4 expert opinion, which is outside the scope of
5 what the Judge instructed this witness.

6 MR. DUBIN: Was your -- okay.

7 So you're instructing him not to answer. I am
8 going to ask another question. If you
9 instruct him not to answer, then so be it.
10 BY MR. DUBIN:
11 Q. But was the microscope set up
12 differently in these two analyses? Can you
13 tell by looking at the images whether the
14 microscope was set up differently in the two
15 analyses?
16 MR. LUDWIG: Same objection.
17 MS. O'DELL: Please put the
18 exhibit in the chat.
19 MR. DUBIN: Are you instructing
20 him not to answer?
21 MR. LUDWIG: Yes.

Page 72:18-73:5

18 Q. Are you familiar -- you're familiar
19 with ISO 22262-1?
20 A. Familiar.
21 Q. Do you know whether it says anything
22 about using blue or daylight filters?
23 MS. O'DELL: Object to the
24 form; calls for expert opinion; beyond the
25 scope of the work that Mr. Hess did in the
1 MDL; and that's my objection.
2 Counsel can decide whether to
3 instruct him not to answer.
4 MR. LUDWIG: I am instructing
5 you not to answer that.

Page 76:5-16

5 Q. Do you know why your images taken on
6 the Olympus microscope of talc are more orange
7 than reference talc images?
8 MS. O'DELL: I object to the
9 use of this exhibit. It's unclear if it came
10 from a report that's at issue in this
11 deposition, it's unclear if it's -- if it's
12 Mr. Hess' work, and we object to its use.
13 MR. LUDWIG: And I will join.
14 It outside the scope of the parameter of the
15 deposition. I am instructing Mr. Hess not to
16 answer that question.

Page 76:19-79:11

19 Q. Let's, again, go to your Zimmerman
20 report. We have already marked that as an
21 exhibit. We can call it back up, CX-6. So we
22 have looked at this already. Let's go back to
23 that image, starting at page 39.

24 So this is something that
25 you're calling chrysotile in parallel in
1 1.550.

2 What color is that?

3 MS. O'DELL: If you need to see
4 it and see it more closely, Mr. Hess, please
5 let us know that.

6 And if there is -- if there is
7 a specific structure you're referring to that
8 you can direct Mr. Hess?

9 MR. DUBIN: Right.

10 BY MR. DUBIN:

11 Q. The one with the micron bar under it
12 is the one that they are calling chrysotile.
13 What color is it?

14 MR. LUDWIG: Can I have that
15 question reread, please?

16 THE COURT REPORTER: One
17 moment.

18 "QUESTION: So this is
19 something that you're calling chrysotile
20 in parallel in 1.550.

21 "What color is that?"

22 MR. LUDWIG: I am going to
23 object once again. It's calling for an expert
24 opinion.

25 MR. DUBIN: This is -- I am
1 asking him about his reports that are at issue
2 in this case and asking him what color that he
3 is calling particles and that is exactly in
4 the scope of the deposition.

5 So unless you're instructing
6 him not to answer that as well, my question
7 stands.

8 MR. LUDWIG: I instruct him not
9 to answer that question.

10 MR. DUBIN: Okay. So now
11 you're instructing the witness not to answer
12 questions even about the specific reports that
13 he was -- that we were permitted to depose him

14 on.

15 Is that my understanding?

16 MS. O'DELL: So would you

17 repeat your question, please?

18 MR. DUBIN: Oh, my goodness.

19 What color is the particle that you're calling

20 chrysotile here?

21 MR. LUDWIG: I am standing by

22 my objection. I am instructing him not to

23 answer.

24 It goes to -- you're asking him

25 to opine as to the color. The color is on the

1 screen and it is part of an expert report

2 prepared by MAS and you're taking it out of

3 context.

4 So I am going to instruct you

5 not to answer.

6 If you want to ask him how he

7 developed the color, that's what the Judge

8 said, but --

9 MR. DUBIN: (Inaudible.)

10 MR. LUDWIG: -- his personal

11 involvement.

Page 81:16-82:9

16 MR. DUBIN: Okay. Let's put up

17 Hess slide 25 as exhibit 11.

18 (Exhibit 11 marked for

19 identification.)

20 BY MR. DUBIN:

21 Q. We're looking at images of PLM --

22 and I will mark the entire report also from

23 Mr. Poye and from you -- both from on talcs.

24 Do you have any understanding

25 why the images look so different?

1 MR. LUDWIG: Objection to form;

2 that goes into expert testimony and you made

3 your question -- this appears to be a defense

4 exhibit, I guess, comparing two different

5 samples. It is not a specific report from

6 MAS.

7 So I am instructing the witness

8 not to answer. This calls for expert opinion,

9 outside the scope of his testimony.

Page 84:8-25

8 Q. Okay. Have you reviewed his
9 affidavit entitled: Review of Dr. Longo's PLM
10 Methods for the Identification of Chrysotile?
11 A. I don't recall that one.
12 Q. Okay. What, if any, comments do you
13 have on the slides that you reviewed from
14 Dr. Su?
15 A. Well --
16 MS. O'DELL: Object to form.
17 MR. LUDWIG: Object to the
18 form.
19 MS. O'DELL: Calls for expert
20 opinion. It's beyond the scope of this
21 deposition.
22 MR. DUBIN: Are you instructing
23 him not to answer?
24 MR. LUDWIG: I am instructing
25 him not to answer.

Page 85:2-86:9

2 Q. You also indicated you reviewed some
3 materials from Dr. Wylie?
4 MS. O'DELL: Same.
5 BY MR. DUBIN:
6 Q. What did you review?
7 A. The report that -- I don't recall
8 the name of the report, but I believe it was
9 her most recent report.
10 Q. Okay. Do you have any comments on
11 the -- on her review of your work?
12 MR. LUDWIG: Same objection.
13 I instruct him not to answer.
14 He is not here to provide criticisms of
15 Dr. Wylie. The Court made it very clear, the
16 scope of the testimony.
17 MS. O'DELL: Join.
18 MR. DUBIN: These are all
19 related to his work that is the subject of
20 this deposition, but if you're instructing him
21 not to answer, then that will be an
22 instruction. We'll take it up at some point.
23 Because we're clearly going to
24 have to go back to the drawing board about the
25 way that these objections are being made, but
1 if you're instructing him not to answer, but

2 my proffer is that they are all about the
3 reports at issue in this case.
4 MS. O'DELL: Mr. Hess is here
5 today to answer questions regarding his
6 reports and he has answered your questions
7 about those. He is not here to offer expert
8 opinion, criticism, thoughts, et cetera, about
9 defense or expert witnesses.

Page 90:24-91:12

24 Q. Okay. And what is the expected
25 effect if you are switching from 1.550 to 1.60
1 oil?
2 A. We didn't switch to 1.60.
3 Q. Sorry. What did you say?
4 A. That we didn't switch to 1.60.
5 Q. You didn't switch to 1.560? Maybe I
6 misspoke.
7 What is the expected effect of
8 switching to one, five -- 1.560 oil?
9 MR. LUDWIG: I'm going to
10 object; that calls for an expert opinion. I
11 am instructing the witness not to answer that
12 question.

Page 93:19-96:19

19 Q. Now, I want to just quickly flip
20 back to the Zimmerman report we have already
21 looked at, the image, and if we can just look
22 at the image we had up before.
23 Can you see that the image in
24 the Zimmerman report is more golden or orange
25 than the image in the Valadez report? We can
1 go back and forth between them if you need to.
2 MR. DUBIN: Can we flip back to
3 Valadez?
4 BY MR. DUBIN:
5 Q. Do you see that the Zimmerman report
6 image is more golden or orange?
7 A. I do.
8 Q. Do you know why that is?
9 A. From the BH2, which is the Zimmerman
10 report, we were on a tungsten lamp, and it was
11 to the respect that we were dealing with extra
12 yellows from the tungsten lamp.
13 Q. So the tungsten lamp was changing

14 the color of the particle then?

15 MS. O'DELL: Object to the
16 form.

17 MR. LUDWIG: Object to form.

18 BY MR. DUBIN:

19 Q. Is that correct?

20 MS. O'DELL: Object to the
21 form.

22 THE WITNESS: We felt it was
23 adding more yellow to the image of what we
24 were seeing and what we were documenting.

25 BY MR. DUBIN:

1 Q. Okay. And it wasn't just adding
2 yellow. If we go back to the Zimmerman report
3 image, it was adding sort of darker golden
4 colors or orange colors to the image, right?

5 MS. O'DELL: Object to form.

6 MR. LUDWIG: Objection. This
7 calls for an expert opinion.

8 I will instruct you not to
9 answer that one.

10 MR. DUBIN: You're instructing
11 him not to answer that question about the
12 comparison between these two images?

13 MR. LUDWIG: Correct. You're
14 testifying and I am going to object to that
15 one.

16 MR. DUBIN: You're objecting
17 and you're instructing your witness not to
18 answer a question about the impact of lighting
19 on his images in the reports at issue in this
20 deposition and you're instructing him not to
21 answer.

22 Is that my understanding?

23 MR. LUDWIG: Could you -- let
24 me hear the question again because I think
25 you -- what you said was different than what
1 your question was.

2 MR. DUBIN: We can read the
3 question back.

4 THE COURT REPORTER: One
5 moment.

6 "QUESTION: And it wasn't just
7 adding yellow. If we go back to the
8 Zimmerman image, it was adding sort of
9 darker golden colors or orange colors to

10 the image, right?"

11 MS. O'DELL: Object to the
12 form.

13 MR. LUDWIG: I am going to
14 stand by my objection.

15 MR. DUBIN: So you're not just
16 objecting. You're instructing him not to
17 answer that question. I need to understand
18 that.

19 MR. LUDWIG: Correct.

Page 97:19-98:3

19 Q. So, again, I am asking you a
20 question about this image.
21 The tungsten lighting is not
22 just adding more yellow; it's adding golden
23 colors and more orange color to the images,
24 right? Is that correct?

25 MR. LUDWIG: Object.

1 I instruct you not to answer.

2 MR. DUBIN: You're instructing
3 him not to answer that question. Okay.

Page 103:5-15

5 Q. Are you familiar with the fact that
6 you can -- that even with Cargille glass that
7 has a single refractive index, you can
8 sometimes see edge colors that don't
9 correspond to that refractive index?

10 MS. O'DELL: Objection; seeks
11 expert opinion beyond the scope of the
12 deposition. I will let Mr. Hess' counsel
13 instruct him.

14 MR. LUDWIG: I am going to
15 instruct him not to answer that question.

Page 109:19-110:6

19 Q. Reference chrysotile, the refractive
20 index number given for that particle by ISO is
21 1.556; that corresponds to magenta, correct?

22 MS. O'DELL: Object to the
23 form.

24 We had an objection previously
25 to this exhibit because it calls for an expert
1 opinion and so --

2 MR. DUBIN: Are you instructing

3 him not to answer?

4 MR. LUDWIG: I am instructing

5 him not to answer for the reasons stated

6 before.

Page 110:16-112:15

16 Q. The number -- the wavelength of

17 light that you assigned to this particle on

18 the left that you're calling chrysotile in

19 Johnson & Johnson, you are saying that it is

20 even more purple than standard reference

21 chrysotile depicted on the right, correct?

22 MS. O'DELL: Objection.

23 This is an incomplete depiction

24 of what's being examined. It is including

25 images that are not Dr. -- Mr. Hess', excuse

1 me, and it is an inappropriate examination of

2 this witness, who is a fact witness, and seeks

3 expert opinion, and we to object to it.

4 MR. DUBIN: First off, I don't

5 understand how you can say every time that he

6 is a fact witness and not an expert. He is

7 here to be deposed about his polarized light

8 microscopy work. There is no way to depose

9 someone about their polarized light microscopy

10 work without asking them questions that are

11 technical in nature.

12 And so if your objection is

13 that every time I ask him for something about

14 his conclusions, it's an expert opinion, then

15 you are essentially shutting down this

16 deposition. It's --

17 MS. O'DELL: That's not

18 correct. We're asking -- we have not

19 instructed Mr. Hess to not respond to

20 questions that are technical. We have

21 instructed him not to give expert opinion

22 because he is here as a fact witness as you

23 know and as the Special Master has ruled.

24 And this seeks a comparison

25 between the photomicrograph that Mr. Hess took

1 to an ISO record for chrysotile and that is

2 beyond the scope of this deposition.

3 That's -- that is --

4 MR. DUBIN: Are you instructing

5 him not to answer?

6 MS. O'DELL: Let me finish.
7 I'm sorry. Let me finish. I stuttered there.
8 Judge Schneider was very clear
9 that he is going to be asked about his work
10 and not a comparison of his work to others and
11 that is expert opinion and that's why we're
12 instructing him not to answer.
13 MR. DUBIN: Okay. So you're
14 instructing him not to answer?
15 MR. LUDWIG: Correct.

Page 112:18-113:18

18 Q. I want to make sure and let me raise
19 the question.
20 As a fact, factually, you
21 assigned a darker purple color to that
22 particle on the left than standard reference
23 chrysotile, correct?
24 MS. O'DELL: Objection; that is
25 the same objection, and I just also object to
1 use of this color chart without reference to
2 the other charts from Dr. Su's tables that
3 take into consideration the temperature and
4 other aspects of the table. It's an
5 incomplete hypothetical. He --
6 MR. DUBIN: I am sorry. I
7 don't think you understand the -- I don't
8 think you understand how the analysis works.
9 Because we already did the temperature of the
10 lab when we figured out what nanometer of
11 light he was calling the particle. So that is
12 not a valid objection scientifically. Are you
13 instructing him not to answer?
14 MS. O'DELL: I am going to let
15 Mr. Hess' counsel instruct him, but I have
16 made my objection.
17 MR. LUDWIG: I am instructing
18 him not to answer.

Page 123:4-124:24

4 Q. So what is the CSDS color of, let's
5 say, this large talc plate towards the bottom
6 left? What is the CSDS color that you would
7 use to assign a refractive index to that
8 particle?
9 MS. O'DELL: Which particle?

10 MR. PLACITELLA: I will place
11 an objection before he answers and I know
12 you're doing the best you can, but at this
13 point, at least on the screen that I am
14 seeing, this image is pretty blurry, you know,
15 but you did -- you're doing the best you can.

16 MR. DUBIN: This is the image
17 that we have from Dr. Longo.
18 MR. PLACITELLA: Well, that's
19 not necessarily the image. This is a blowup
20 on a Zoom, you know.

21 MR. DUBIN: He also has the
22 actual report in front of him on a computer.
23 Now what?

24 MR. PLACITELLA: Just --

25 MR. DUBIN: Okay.

1 MR. PLACITELLA: -- trying to
2 keep the record clean.

3 MR. DUBIN: Okay.

4 BY MR. DUBIN:

5 Q. What CSDS color are you assigning to
6 the talc plates that we're looking at?

7 MS. O'DELL: Object to the
8 form; that seeks expert opinion. He is not
9 a -- he did not analyze these particular talc
10 particles. He didn't make findings in the
11 report.

12 To ask him to do it on the fly,
13 in a Zoom is an expert opinion and beyond the
14 scope of what he did for the report and we
15 object on that basis.

16 MR. DUBIN: Are you instructing
17 him not to answer the question?

18 MR. LUDWIG: I was just going
19 to say, exactly, and I am instructing him not
20 to answer that question because he is not --
21 it's not the scope. Him doing an analysis of
22 a talc particle on the fly is not what the
23 Judge -- is not the purpose of this
24 deposition.

Page 125:21-126:6

21 Q. Okay. And do you see that there is
22 a rounded talc plate? If you move your eye
23 from the top of the two arrows over towards
24 the left, there is a rounded talc plate.

25 Do you see that?

1 MR. LUDWIG: Objection.

2 Once again, you're asking him

3 to analyze what you claim to be a talc

4 particle on the fly; that calls for expert

5 testimony. I am instructing him not to answer

6 that question.

Page 126:8-127:3

8 Q. You said you have done PLM

9 dispersion staining analysis for 30 years,

10 Mr. Hess?

11 A. That is correct.

12 Q. Are you not -- are you not able to

13 tell me -- to follow over on the image and

14 look at this talc plate with me? Is that

15 beyond your experience and training?

16 MR. LUDWIG: I am going to

17 object.

18 This is argumentative. His

19 experience is under the microscope. So I am

20 objecting to the form of the question. It's

21 argumentative.

22 BY MR. DUBIN:

23 Q. Is the particle you're calling

24 chrysotile here, is that essentially the same

25 color as the talc plates in the image?

1 MR. LUDWIG: Objection, same

2 objection. I am instructing him not to

3 answer.

Page 128:3-129:2

3 Q. You -- for purposes of your

4 analysis, you're calling this particle

5 somewhere between a magenta and a purple for

6 purposes of your analysis, right?

7 MS. O'DELL: Just wait a

8 minute.

9 What particle is this?

10 MR. DUBIN: This is the same

11 particle, CSM 002.

12 BY MR. DUBIN:

13 Q. You're calling it somewhere between

14 a magenta and a purple for purposes of your

15 analysis?

16 A. I am calling the edge that I saw.

17 Q. You're calling the edge that you saw

18 purple and magenta? Is that what you're

19 saying?

20 A. That is correct.

21 Q. The same type of purple or red

22 colors that are on the talc plates?

23 MS. O'DELL: Object to the

24 form.

25 MR. LUDWIG: Object to the

1 form.

2 I instruct you not to answer.

Page 129:10-130:5

10 Q. And so one way that you can get

11 these types of edges around particles is if

12 they are just not -- if they are -- is your

13 focus, depending on your focus, right?

14 MS. O'DELL: Object to the

15 form.

16 THE WITNESS: Correct.

17 BY MR. DUBIN:

18 Q. And without these edges, without

19 these sort of red colors at the edges, then

20 the CSDS color that you would have had to

21 assign to the particle would be -- would

22 correspond to yellow, right?

23 MR. LUDWIG: Objection to form.

24 That's calling for an expert

25 analysis, which he is not here to present

1 today.

2 MR. DUBIN: Are you instructing

3 your witness not to answer yet again?

4 MR. LUDWIG: I am instructing

5 him not to answer that one, yes.

Page 136:5-18

5 Q. Okay. And we can go back to the

6 image in the Valadez, same image, and you can

7 see you have these edges, the same types of

8 edges on these -- on many of the rounded

9 structures that are talc plates, right?
10 MS. O'DELL: Objection to the
11 form.
12 MR. LUDWIG: Same objection.
13 I instruct him not to answer.
14 Once again, on-the-fly analysis of talc
15 plates.
16 MR. DUBIN: You're instructing
17 him not to answer?
18 MR. LUDWIG: Correct.

Page 137:25-138:22

25 Q. And I am going to keep asking you
1 some questions about this and if your attorney
2 wants to object and say for you not to answer
3 to each of them, that's fine. We'll do that.
4 Can you see -- are you familiar
5 with this phenomena that even if you look at a
6 particle with a single refractive index,
7 right, for example, blue here, you can see
8 sometimes these edge effects such as the red
9 or the purple that we're seeing in this image?
10 Are you familiar with the fact
11 that that happens?
12 MS. O'DELL: Objection; beyond
13 the scope of the deposition; beyond the scope
14 of this witness' testimony; assumes facts not
15 in evidence.
16 BY MR. DUBIN:
17 Q. Do you know how to determine --
18 sorry.
19 MR. DUBIN: Is there
20 instruction not to answer that?
21 MR. LUDWIG: There is
22 instruction not to answer that, yes.

Page 138:24-139:8

24 Q. Do you know how to determine in
25 these kind of circumstances what the true CSDS
1 color is? Do you know how to do that?
2 MR. LUDWIG: Same objection.
3 MR. DUBIN: Are you instructing
4 your witness not --
5 MR. LUDWIG: I am.
6 MR. DUBIN: -- to answer?
7 MS. O'DELL: Join.

8 MR. DUBIN: Okay.

Page 140:21-141:13

21 Q. Okay. What is a -- do you know how

22 to perform a Becke line analysis?

23 MS. O'DELL: Beyond the scope

24 of the reports in this case and seeks expert

25 opinion.

1 MR. DUBIN: Are you --

2 MR. LUDWIG: Join.

3 MR. DUBIN: -- instructing him

4 not to answer?

5 MR. LUDWIG: Not to answer.

6 BY MR. DUBIN:

7 Q. Do you know how to use a Becke line

8 analysis to determine in a situation such as

9 we're looking at here what the correct CSDS

10 color is?

11 MR. LUDWIG: Same objection;

12 same instruction.

13 MS. O'DELL: Join.

Page 143:11-25

11 Q. I tried to ask you this already,

12 Mr. Hess, but the same type of edge effects

13 that you're relying on to call particles

14 chrysotile in Johnson & Johnson are also

15 present on talc plates in your analysis; is

16 that true?

17 MS. O'DELL: Objection. This

18 is beyond the scope of the deposition and

19 Mr. Hess' testimony.

20 Further, the way that these

21 particles are depicted from who knows what is

22 misleading and not representative of what was

23 actually in the reports.

24 MR. LUDWIG: I will join and

25 instruct the witness not to answer.

Page 147:24-149:12

24 Q. Is your Leica microscope able to

25 take images that are as bright as what we're

1 seeing here in image 62?

2 MS. O'DELL: Let me just --

3 what is being displayed on the screen?

4 MR. DUBIN: I am just using it

5 for demonstrative purposes right now and I am
6 asking him a question about his microscope.

7 BY MR. DUBIN:

8 Q. Is it able to take images that are
9 as bright as the one that we see on the
10 screen?

11 MS. O'DELL: Object to the --
12 object to the question; calls for expert
13 testimony. It's beyond the scope of what he
14 did for purposes of these reports.

15 MR. LUDWIG: I want to add that
16 these images call for speculation. I mean, he
17 is being asked to analyze an image on
18 PowerPoint on an unknown -- an unknown source.
19 I think this, once again, calls
20 for expert testimony to make that comparison.
21 So I am going to instruct him not to answer
22 the question.

23 MR. DUBIN: I am asking him
24 about his microscope, his illumination
25 settings, what he sees under the microscope,
1 and I'm asking him whether his microscope that
2 he knows and he works with is capable of
3 producing an image at this illumination level
4 and my question stands.

5 BY MR. DUBIN:

6 Q. Can you answer that for me,
7 Mr. Hess?

8 MR. LUDWIG: And I am making
9 the same objection I made and I am
10 incorporating the same response and
11 instructing him not to answer.
12 You're asking for a comparison.

Page 149:14-150:9

14 Q. Okay. I will tell you what this is,
15 Mr. Hess. This was an image that was taken by
16 Dr. Su on the same type of microscope that
17 you're using.
18 Are you testifying that your
19 microscope cannot take images at this level of
20 illumination?

21 MS. O'DELL: Objection; calls
22 for expert testimony, it's beyond the scope of
23 this deposition, and he has testified already
24 to the level of illumination that he has used

25 in the photomicrographs for these reports.

1 MR. LUDWIG: Once again, I am

2 going to incorporate my previous objections

3 and instruct him not to answer. Dr. Su --

4 MR. DUBIN: If you're going to

5 instruct him not to -- if you're going to

6 instruct him not to answer, we don't have

7 to --

8 MR. LUDWIG: I instruct him not

9 to answer then.

Page 153:23-155:5

23 Q. Looking again at the Zimmerman

24 image, we see some talc plates here.

25 Why isn't your talc pale yellow

1 to white in this image?

2 MR. LUDWIG: (Inaudible.)

3 THE COURT REPORTER: I couldn't

4 hear you, sir. Please repeat.

5 MR. LUDWIG: I said, Paul, if

6 you need it zoomed in, please feel free to ask

7 it.

8 THE WITNESS: Well, one, my

9 previous comment was based on fibrous talc,

10 not talc flakes.

11 BY MR. DUBIN:

12 Q. And anything else?

13 A. No.

14 Q. Okay. The refractive index of

15 elongated talc or a talc fiber in parallel is

16 similar to the refractive index of the talc

17 plate, correct?

18 MS. O'DELL: Calls for an

19 expert opinion; beyond the scope of this

20 deposition. I --

21 MR. LUDWIG: And I join and

22 instruct him not to answer.

23 MR. DUBIN: I am asking him

24 about what he just testified about, the

25 explanation that he just testified about, and

1 you're instructing him not to answer.

2 Is that -- is that actually

3 happening? Because -- are you instructing him

4 not to answer that question?

5 MR. LUDWIG: Yes.

Page 158:19-25

19 Q. So the whole reason why dispersion
20 staining can be used is because minerals have
21 defined refractive indices, right?
22 MR. LUDWIG: That calls for
23 expert testimony, objection.
24 I instruct you not to answer.
25 MS. O'DELL: Join.

Page 159:15-25

15 Q. Okay. So how is it in your view
16 that somehow Calidria is also showing golden
17 yellow? What physical -- what property of
18 physics changes it so that sometimes when
19 you're finding it, it's to you golden yellow
20 as opposed to magenta?
21 MR. LUDWIG: Objection, same
22 objection.
23 I instruct you not to answer.
24 Calls for expert testimony.
25 MS. O'DELL: Join.

Page 164:16-165:4

16 Q. Were you aware that MAS had recorded
17 previously their refractive indices associated
18 with Calidria asbestos?
19 MS. O'DELL: I object to --
20 first, object to the use of this exhibit.
21 It's not been disclosed in the MDL, it's not
22 something that this witness should be asked
23 about, but I would -- I would encourage
24 counsel to instruct him not to answer. This
25 is beyond the scope.
1 MR. LUDWIG: I was going to.
2 This is totally beyond the scope of what the
3 Judge said. So I am objecting to the question
4 and I am instructing my client not to answer.

Page 167:2-22

2 Q. But you would agree that what you're
3 identifying as chrysotile in Johnson & Johnson
4 does not look like standard reference
5 chrysotile, correct?
6 It does not have the magenta in
7 parallel and blue in perpendicular associated
8 with standard reference Chrysotile, correct?

9 MS. O'DELL: Objection;
10 misstates the record; calls for expert
11 opinion.
12 MR. LUDWIG: Join. I instruct
13 the witness not to answer.
14 MR. DUBIN: So you're
15 instructing him not to answer about the colors
16 that he is seeing in the analysis that this
17 whole deposition is about? Is that my -- is
18 that right?
19 MS. O'DELL: That's not
20 correct.
21 MR. LUDWIG: I am instructing
22 him not to answer the question as asked.

Page 174:2-176:3

2 MR. DUBIN: I am sure he has
3 produced his reference images because he
4 always produces his reference images because
5 we always request his reference images.
6 If you really are going to shut
7 me down from asking a question about the
8 reference images that were -- that are relied
9 on for the reports in this case, then you're
10 going -- you're going to do that. You're
11 going to make the objection and we're going to
12 go and argue about it and I think it is highly
13 improper or you could let me ask him a
14 question about an image that directly relates
15 to his work and that he took.
16 MS. O'DELL: Well, we don't
17 have -- one, there is no evidence of that and
18 second is Mr. Hess is here to testify on the
19 reports that are produced in the MDL. Other
20 things that Dr. Longo relies on are not at
21 issue here for his opinions. So --
22 MR. DUBIN: These are the --
23 again, these are the images that Dr. Longo
24 uses with his reports and the whole purpose of
25 this is to ask the person who took the images
1 about them.
2 I am not going to continue to
3 argue with you. If you're going to instruct
4 the witness not to answer, go ahead and do it,
5 because I think that this deposition has gone
6 way off the rails and we're going to have to

7 go to the Judge about it. So just do whatever
8 you're going to do. I don't want to argue
9 with you anymore.

10 Are you claiming that you are
11 going to stop this person, Mr. Hess, from
12 talking about the reference images for the
13 alleged chrysotile in Johnson & Johnson? If
14 so, instruct him, and let's just have that
15 done.

16 MS. O'DELL: Judge Schneider
17 was very clear as to what was fair game in
18 this deposition and those are the reports
19 produced in the MDL that involve the new
20 method, to my knowledge. And you can correct
21 me, but I don't think I am incorrect.
22 This is not a part of those
23 reports and it's not something that's an
24 appropriate scope of this deposition and we
25 would instruct the witness not to answer.
1 MR. LUDWIG: And I am going to
2 join for the reasons stated and instruct the
3 witness not to answer.

Page 178:6-179:7

6 (Exhibit 27 marked for
7 identification.)

8 MS. O'DELL: I'm sorry. Is
9 this exhibit 27?

10 MR. DUBIN: Twenty-seven.

11 MR. LUDWIG: (Inaudible.)

12 THE COURT REPORTER: If you
13 just said something, Mr. Hess, I couldn't hear
14 you.

15 MR. LUDWIG: That was me
16 talking to myself. I apologize, Jessica. I
17 am simply saying that my exhibit list is
18 mis-numbered for some reason.

19 BY MR. DUBIN:

20 Q. Are you claiming those two -- those
21 two images have the same dispersion staining
22 colors?

23 MR. LUDWIG: I am going to
24 object to the form of the question.

25 MS. O'DELL: I object to the
1 question.

2 MR. LUDWIG: Yeah.

3 MS. O'DELL: This is --

4 MR. DUBIN: Are you instructing
5 him not to answer?

6 MS. O'DELL: Yes. This is
7 beyond the scope.